Future cost of domestic help	—	$ 30,000
Special damages (not under appeal)	—	$ 31,163.85
Future medication (not under appeal)	—	$ 5,000
		$282,713.85

I have looked again at the three items constituting general damages which add up to a total of $246,550. Considering the injuries and the residual disabilities which the first plaintiff now suffers, this figure is, I think, fair and reasonable. In my view, in the circumstances of this case, the sum awarded by the senior assistant registrar is astronomical.

Accordingly, I order the defendant to pay the first plaintiff a sum of $282,713.85 as damages, together with interest accruing on $113,163.85 ($82,000 + $31,163.85) at the rate of 6% pa from the date of the writ up to the date of this order and a further interest of 2% on $31,163.85 from 22 February 1990 to the date of this order. As regards the order made by the senior assistant registrar in favour of the second plaintiff, that shall remain.

As regards costs, I think it is only fair and proper that the taxed costs of the plaintiffs at the hearing below be abated by 40%. The defendant shall be entitled to the costs of this appeal which I fix at $18,000.

Appeal allowed in part.

Solicitors: *Khattar Wong & Partners; Lawrence Chua & Partners.*

Reported by *Kevin Mathews*

Anuar bin Othman v Public Prosecutor

HIGH COURT (SINGAPORE) — CRIMINAL MOTION NO 1 OF 1990
CHAN SEK KEONG J
3 DECEMBER 1990

Criminal Procedure — Appeal — Extension of time for filing notice of appeal — Test to be applied — Effect of acquittal of the co-accused — Merits of the case

Criminal Law — Corruption — Particulars of charge

The applicant was charged and tried jointly with a co-accused for two offences under the Prevention of Corruption Act (Cap 24, 1985 Ed). Both accused were hawker liaison officers with the Housing and Development Board ('HDB'). They were acquitted of one charge but convicted of receiving gratification as a reward for showing favour in their principal's affairs. Both accused filed notices of appeal against their convictions. The applicant filed his notice personally as he claimed he had exhausted all his funds contesting the trial and could not afford legal counsel. On 23 August 1988, he was served the notes of evidence and grounds of decision. However, he claimed he did not know how to prepare the petition of appeal and did not realize that it had to be filed within ten days. He thus did nothing further.

Sometime in 1989, the applicant learnt that the co-accused's appeal had been allowed and his conviction set aside. The applicant now wished to proceed with his appeal and applied for an extension of time to file his petition of appeal.

The DPP objected saying that the delay of more than 18 months is inordinate, and that the applicant must show that he has an arguable case. The court heard the full arguments as if it was hearing the appeal.

On convicting the accused, the district judge had opined that there was no evidence showing that the accused had shown favour to the assistant and instead the charge should have been 'as a reward for doing an act in relation to your principal's affairs'. The district judge said he did not amend the charge as it was sufficiently clear from the charge and the facts adduced in evidence what the prosecution's case was.

Held, allowing the application:

(1) The explanation for the delay in making the application is accepted.

(2) The proposition that the setting aside of the conviction of the co-accused does not in itself show merit is incorrect. It depends on the facts of each case.

(3) Having found that the prosecution had adduced no evidence to sustain the charge, the district judge should have acquitted the two accused as required by s 180(f) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC').

(4) It was erroneous to equate 'showing favour' with 'doing an act'. The most essential particular of the charge was the showing of favour by assisting the hawker assistant in getting approval.

(5) The applicant could not have known from the particulars of the charge and the evidence that he was being charged for helping the hawker assistant in filling up the application form, submitting it on the latter's behalf and subsequently obtaining a lunch from the latter.

(6) The district judge failed to articulate his line of thinking to the two accused's counsel. Therefore they could not have known that the defence was called on a joint charge of 'doing an act' and 'showing favour'. The record shows that the witnesses were not questioned on the charge as clarified by the district judge. Thus the applicant had not been given a fair trial.

(7) If the district judge had amended the charge pursuant to s 180(h) of the CPC, the defence counsel might well have objected to the legality of the trial continuing on the amended charge on the ground that the Public Prosecutor had not given his consent thereto under s 31 of the Prevention of Corruption Act (Cap 241, 1985 Ed), which might have been a fatal objection.

(8) For the reasons above, the applicant had shown that there was more than an arguable case that the conviction was wrong.

Cases referred to

1 *R* v *Moona Mohamed Hussain Marican* [1936] MLJ 36 (refd)
2 *Zulkifli bin Puasa & Ors* v *PP* [1985] 1 MLJ 461 (folld)
3 *Rigby's Case* (1923) 17 Cr App R 111 (distd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 180(f), (h)
Penal Code (Cap 224, 1985 Ed) s 34
Prevention of Corruption Act (Cap 241, 1985 Ed) ss 6(9), 31

Mangalam Amaladass for the applicant.
Lau Wing Yum (State Counsel) for the respondent.

Cur Adv Vult

Chan Sek Keong J: This is a motion by the applicant for extension of time to file the petition of appeal in DAC 10514/87. The applicant was charged and tried together with one Ranjeet Singh, the first accused, in a joint trial for two offences under s 6(a) of the Prevention of Corruption Act, (Cap 241, 1985 Ed) read with s 34 of the Penal Code (Cap 224, 1985 Ed). The first charge was:

> That you, Ranjeet Singh and Anuar Bin Othman are charged that you, on 22 July 1987, at Spring Season Pte Ltd, 301 Upper Thomson Road, #02-98/12, Singapore, being agents to wit, higher hawkers liaison officer and hawkers liaison officer respectively attached to the Hawkers Section, Ang Mo Kio Area Office, Housing and Development Board, Singapore, in furtherance of the common intention of both of you, did corruptly obtain from one Tan Siang Kim, a hawker assistant, a gratification in the form of a lunch treat valued at forty six dollars and ninety cents ($46.90), as a reward for showing favour to the said Tan Siang Kim in relation to your principal's affairs by assisting him in getting approval for his application to be employed as hawker assistant of stall #01-47 Block 453A, Ang Mo Kio Avenue 10, Singapore, and you have thereby committed an offence punishable under s 6(a) of the Prevention of Corruption Act (Cap 241) read with s 34 of the Penal Code (Cap 224).

The second charge was:

> That you, Ranjeet Singh and Anuar Bin Othman are charged that you, on 22 July 1987, at Spring Season Pte Ltd, 301 Upper Thomson Road, #02-98/12, Singapore, being agents, to wit, higher hawkers liaison officer and hawkers liaison officer respectively attached to the Hawkers Section, Ang Mo Kio Area Office Housing and Development Board, Singapore, in furtherance of the common intention of both of you, did corruptly obtain from one Tan Siang Kim, a hawker assistant, a gratification in the form of money as a reward for showing favour to the said Tan Siang Kim in relation to your principal's affairs by assisting him in getting approval for his application to be employed as hawker assistant of stall #01-47, Block 453A, Ang Mo Kio Avenue 10, Singapore, and you have thereby committed an offence punishable under s 6(a) of the Prevention of Corruption Act (Cap 241) read with s 34 of the Penal Code (Cap 224).

Both the applicant and Ranjeet Singh were on 30 June 1988 acquitted of the second charge after they had entered their defences, but were convicted on the first charge and were each fined $800, in default two months' imprisonment. Both accused were also ordered to pay a penalty in the sum of $15.63, in default three days' imprisonment.

Both the applicant and Ranjeet Singh filed notices of appeal against their conviction. The applicant filed his notice personally. In his affidavit, he has stated that he was unable to engage a solicitor as he had exhausted all his funds, including his children's savings, to pay solicitor's fees in connection with the trial on the two charges.

On 23 August 1988, the applicant was served with the grounds of decision and notes of evidence, but he did not know how to prepare the petition of appeal and also did not realize that it had to be filed within 10 days from the receipt of the grounds of decision. He did nothing further as he claimed he was ignorant of the procedures and had insufficient funds to engage a solicitor.

Some time in 1989, the applicant read in the newspapers that Ranjeet Singh's appeal against conviction had been allowed by the High Court. The applicant has now raised sufficient funds to pursue his appeal on the ground that he had been wrongly convicted. The DPP has objected to this application on the ground that it is only in exceptional cases that an extension of time should be given: see *R* v *Moona Mohamed Hussain Marican*[1] at p 38. The DPP also referred me to the decision of the Court of Appeal of Brunei in *Zulkifli bin Puasa & Ors* v *PP*[2] where the court said at p 462:

> There are two factors to be considered upon an application for an extension of time, (1) the length of the delay and whether it can be satisfactorily explained, and (2) whether the out of time application is likely to succeed.

The DPP has submitted that the delay of more than 18 months is inordinate, that the applicant must show that he has an arguable case and that the fact that Ranjeet Singh, his co-accused, has succeeded in his appeal does not necessarily mean that the applicant would also be successful.

I accept the grounds given by the applicant for the delay in making this application as excusable. He was only employed as a hawker liaison officer.

With regard to the second objection that the applicant must show that he has an arguable case, I am not ready to agree with the general proposition that the fact of the setting aside of the conviction of the co-accused does not in itself show merit. In my view, it depends on the facts of each case. In *Rigby's Case*,[3] where the appellant was convicted together with a co-accused of stealing and receiving a motor car, Hewart LCJ said at p 113:

> In this case it is clear that the appellant never thought that he had any ground for appealing until he heard that Spinney's conviction had been quashed. In itself the mere fact that a fellow prisoner's conviction has been quashed is no ground for extending the time for appealing of another prisoner.

It is, however, to be noted that in the present case the applicant did file a notice of appeal in time and so it could not be said against him that he had never thought that he had no ground of appeal even before Ranjeet Singh's conviction was quashed.

In order to determine whether the applicant has an arguable case, I decided to look into the merits of this case as if I were hearing the appeal as it was the most convenient course to take in the circumstances. Because this was an unusual course to take, I indicated to the DPP and counsel for the applicant that this was what I intended to do and I received no objection from them. I accordingly asked for and have heard full arguments based on the grounds of decision and the notes of evidence to ascertain whether or not the applicant had an arguable case.

The prosecution's evidence against the second accused on the first charge was as follows: PW1, the approving officer with the HDB, received from the stallholder in July 1987 a letter ('P3') for Tan Siang Kim ('TSK') to be employed as an assistant. Following that, the stallholder filled up an application form ('P4'), which was a standard form issued by the HDB to all applicants. P4 required the particulars of the stallholder and of the assistant to be filled in. They were so filled in in a handwriting which the prosecution had not identified at the end of this case. At the bottom of the form, there was a notation that declarations in the form had been explained by Anuar bin Othman, the applicant, on 19 July 1987. On the reverse of the form were two entries which read:

a) Seen NRIC of Asst.
b) MC attached.

PW1 said that he approved the application on 21 July 1987.

PW4, the general co-ordinator of the HDB Ang Mo Kio Office, Hawker Section, testified that the accused was in one of his teams of hawker liaison officers and that the said officers were responsible for processing applications by stallholders for the employment of hawker assistants. They also had to ensure that the stallholders had complied with the conditions of their licences.

TSK ('PW3') testified that the licensee was his grandmother but that his mother was the registered assistant. Between June and July 1987, a complaint was lodged against the stall for employing TSK without a licence. After that, the applicant and Ranjeet Singh approached him and asked whether he had the application letter ('P3') and two photographs. He did not have them. Two days later, the two of them came again and TSK handed to them P3 and two photographs. The second accused then told him that there would be some difficulties in his application. They mentioned that the weather was hot and asked him if he was free in the afternoon. When he replied that he was free, they told him to meet them at the ground floor of Ang Mo Kio area office at 1.30pm. He met the second accused at the ground floor at the appointed time and when the first accused arrived, they got into the first accused's car. They then took him to Thomson Yaohan where they went into a coffee house where they ordered beer, chilli prawns, fish and chips for lunch. They talked during lunch. TSK asked whether the stall licence could be transferred to his mother's name or to his name and the two accused told him that that was impossible and that they would have to wait until his grandmother passed away and when that occurred, they would help him to make the arrangements. They also told him that his application to work as a stallholder had been approved and that they had great difficulty in getting this done.

TSK then said that the first accused showed him a certificate but did not give it to him. Subsequently, the second accused told him that they had given help to him and asked whether he could help them. He thought they were asking for money. So he asked them how much they wanted and they in turn asked how much he could give. They carried on with their lunch and after lunch, he paid the bill. The rest of the evidence of TSK was in respect of the second charge.

TSK identified the certificate as P8 and said it was given to him on 24 July 1987. He also said that when P4 was given to him, the second accused filled up the form in the presence of the first accused.

That, in substance, was the case for the prosecution on the first charge. Counsel for the first accused made a submission of no case to answer. Counsel for the second accused made no submission. The district judge called for the defence and both accused gave evidence.

In his grounds of decision, the district judge made the following findings:

> In respect of the application (P4) the blank of this form had been handed to PW3 by the second accused sometime

before 21 July 1987 in order that he could, inter alia, get his grandmother to affix her thumbprint to it. According to PW3 the first accused was with the second accused when the form was handed to him. After the form had been duly completed by the second accused with particulars supplied by PW3, it was forwarded together with other supporting documents by the second accused to PW1 through the first accused and after PW1 had approved the application on 21 July 1987 the file with the application was returned to the first accused. PW3 eventually received the certificate which officially identified him as a hawker assistant (P8) on 24 July 1987.

The day after the application (P4) had been approved, ie 22 July 1987, PW3, the first accused, and the second accused had lunch together at the Spring Season coffee house at Thomson Plaza.

After referring to the charge, the district judge said:

It is to be noted that in the above charge the 'favour' shown by the two accused to Tan Siang Kim has been particularized, viz 'assisting him in getting approval for his application'. In this case this was done when the forms were brought to PW3 and filled in for him and then submitted to PW1, ie acts that were part and parcel of the jobs of the two accused. It was not the allegation of the prosecution from the facts adduced that the two accused had shown any partiality in favour of PW3. Such being the case that part of the charge which read as 'as a reward for showing favour to the said Tan Siang Kim in relation to your principal's affairs' could perhaps have been made clearer by wording it as follows:

> 'as a reward for doing an act in relation to your principal's affairs'.

I did not at the close of the prosecution case amend the charge because in spite of the wording chosen by the prosecution it was quite clear from the particulars given in the charge and the facts adduced in the prosecution case as to what exactly was being alleged by the prosecution against the two accused.

Having found that the two accused had obtained a gratification in the form of a free lunch, the district judge went on to determine whether or not the gratification was received corruptly. He held as follows:

However from what I have been able to deduce from the submissions of the defence it would appear that it was the case for the defence the gratification was not corruptly obtained in this case because there was no evidence of the two accused favouring PW3 in any way in the process of PW3's application to be an approved hawker assistant, ie everything was aboveboard and no impropriety was suggested against the two accused. The submission was not a novel one and Wee Chong Jin CJ in the case of *Wee Toon Boon* v *PP* had the following to say in respect of a similar submission:

> '... It is submitted that all the acts relied on by the prosecution were in truth commonplace, harmless acts of the kind the appellant as a member of Parliament was doing all the time for all sorts of people and that the doing of the acts alleged in the charges did not amount to any wrongdoing of the kind which can come within the meaning of the expression 'corruptly' in the Act. In my opinion the fact that the evidence showed that the acts done by the appellant may well have been commonplace acts which members of Parliament here ordinarily do for members of the public who seek their assistance is immaterial. The real question is, and on this the onus is on the appellant to prove the contrary, did the appellant corruptly accept the gratifications as a reward for the acts he had done ... One of the mischiefs aimed at by the Act was to prevent a public officer or public servant from accepting gifts in cash or in kind from a member of the public except in circumstances in which he will be able to show clearly that he has legitimate reasons for doing so.'

From the facts of this case I found that not only had the two accused failed, on a balance of probabilities, to prove that they had not accepted the gratification corruptly but that it had also been proved beyond a reasonable doubt that they had accepted it corruptly. They were accordingly found guilty and convicted.

In my view, the district judge has erred in several aspects in the conduct of the trial and in his reasoning. Firstly, having found that the prosecution had adduced no evidence to sustain the charge of 'showing favour to TSK in relation to their principal's affairs by assisting him in getting approval for his application to be employed as a hawker assistant', he should have acquitted the two accused as he was required to do under s 180(f) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC').

Secondly, the act of 'showing favour' was construed by the district judge to mean the 'doing of an act'. I do not think that he was entitled to make such an equation in a criminal charge for a serious offence like corruption, as the fact that the applicant had done an action in relation to the affairs of the HDB was not, as the district judge recognized, necessarily a showing of favour. If they expressed different ideas, I am unable to see how the expression 'showing favour' could have been made clearer by submitting the expression 'doing an act'.

Thirdly, and following from the second reason, it was also not correct for the district judge to say that 'it was quite clear from the particulars given in the charge and the facts adduced in the prosecution case as to what exactly was being alleged by the prosecution against the two accused'. Although the particulars referred to the lunch on a certain date etc, the most essential particular of the charge was still the *showing of favour by assisting TSK in getting approval.* The particulars of the charge did not allege that the favour was the filling up of P4. From the applicant's point of view, he would not have understood that this was the favour for which he was rewarded. There was nothing sinister in the fact of the applicant's name appearing on that form as he had signed it to signify that he had checked the particulars of PW3. This was a duty of the applicant, again as the district judge had recognized in his grounds of decision. I am unable to see how the applicant could have known from the particulars of charge and the evidence that he was being charged for helping PW3 in filling up P4 and

bringing it to PW1, and subsequently obtaining a lunch from PW3.

Fourthly, the district judge failed to articulate his line of thinking to counsel for the two accused. He called for the defence without giving any reason. In this situation, how could counsel and their clients have known that the defence was called on a joint charge of 'doing an act' and not 'showing favour'? Of course they did not know. Nor did the prosecutor. The notes of evidence show that counsel did not put to the applicant and Ranjit Singh questions on the specific acts they did by way of assistance to PW3, nor did the prosecutor cross-examine them on these acts with respect to the charge as clarified by the district judge. The cross-examination was substantially in relation to the second charge. In my view, the applicant did not have a fair trial on the charge on which he was convicted.

Fifthly, if the district judge had adopted the normal course of amending the charge pursuant to his powers under s 180(h) of the CPC, defence counsel might well have objected to the legality of the trial continuing on the amended charge on the ground that the public prosecutor had not given his consent thereto under s 31 of the Prevention of Corruption Act (Cap 241, 1985 Ed). This might have been a fatal objection.

For the above reasons, I hold that the applicant has shown more than an arguable case that his conviction was wrong in law. Counsel for the applicant has advanced other arguments that the conviction was wrong, including the contention that on the evidence the element of common intention was not proved. I do not propose to deal with these arguments, as on the basis of what I have said above, the application to file the petition of appeal out of time will be allowed. His bail is extended on the same terms until the hearing of the appeal against conviction.

Application allowed.

Solicitors: *M Dass & Co.*

Reported by *S Surenthiraraj*

MALAYSIAN REPORTS

Re Vazeer Alam Mydin Meera

HIGH COURT (KUALA LUMPUR) — PETITION FOR ADMISSION NO 18-474-90
EUSOFF CHIN J
13 MAY 1991

Legal Profession — Variation of order — Chambering pupil allowed to appear in open court in sessions courts on behalf of his master in civil cases where value of subject matter does not exceed $25,000 — Legal Profession Act 1976, ss 36(2) & (5)

Words and Phrases — 'Vary' — Legal Profession Act 1976, s 36(5)

Order 54 r 12 of the Subordinate Courts Rules 1980 was amended and Practice Direction No 4/1990 dated 29 November 1990 was issued directing magistrates, until further notice, to concentrate on the disposal of criminal cases. The result was that, except for small claims cases, effective from 1 January 1991, all civil suits in the lower courts were filed in the sessions courts. An application was then filed under s 36(5) of the Legal Profession Act 1976 ('the Act') by the master of a pupil to vary the order made under s 36(2) of the Act so as to enable the pupil to appear in open court in the sessions courts to conduct civil cases on behalf of his master.

Held, allowing the application:

(1) Section 36(2) of the Act should be read subject to s 36(5) of the Act. This means that the order made by the judge under s 36(2) of the Act can be subject to variation, or rescission. There must, of course, be an application made by the master (or Bar Council or State Bar Committee) under s 36(5) of the Act, which application must only be made after the master has obtained an order under s 36(2) of the Act.

(2) The word 'vary' in s 36(5) of the Act should be given its ordinary meaning, which is to 'change, alter, modify, add to or subtract from'.

(3) Section 36(5) of the Act gives a wide discretion to the High Court to vary an order already made under s 36(2) of the Act. The only thing that the court has to consider in making or refusing to make an order under s 36(5) is whether in all the circumstances, the order is or is not, 'in the best interest of the profession'.

(4) Unless the application is allowed, chambering pupils will not be afforded the opportunity of appearing and conducting civil cases in open court in the subordinate courts which experience is very necessary in preparing them to become full-fledged advocates and solicitors of the High Court. It is, therefore, in the best interest of the legal profession that chambering pupils be given the experience of gaining practical knowledge in the conduct of civil suits while in training before being called to the Bar.

(5) Now civil suits where the value of the subject matter does not exceed $25,000 which can be filed and heard in the magistrates' courts are filed and heard in the sessions courts. Henceforth, in allowing the application, an order was made that after the period of three months' pupillage, the pupil may appear in open court in sessions courts to conduct on behalf of his master, civil cases whose value or subject matter does not exceed $25,000.

[Bahasa Malaysia summary

Aturan 54 k 12 Kaedah-Kaedah Mahkamah Rendah 1980 telah dipinda dan Arahan Amalan No 4/1990 bertarikh 29